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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.C., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

E061101

(Super.Ct.No. J248136)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Michele Anne Cella, under appointment by the Court of Appeal, for Defendant
and Appellant.

Jean-Rene Basle, County Counsel, Jamila Bayati, Deputy County Counsel, for
Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for Minor.

This opinion constitutes this court's second time addressing this matter. (See *In re N.P. et al.* (Jan. 21, 2014, E058754) [nonpub. opn.] [prior appeal].) S.B. (Mother) has four biological children. In Mother's prior appeal this court affirmed the termination of Mother's parental rights to the three older children. Mother's youngest child, J.C., was born while the three older children's case was pending in the juvenile court. In the prior appeal, this court reversed the order sustaining the petition (jurisdiction findings) as to J.C. J.C.'s presumed father, M.C. (Father), did not appeal the order sustaining the petition. Therefore, this court did not issue any opinion as to Father in the prior case.

Originally, in regard to disposition, J.C. was placed in Mother's custody, but removed from Father's custody. In the prior appeal, the notice of appeal was filed on May 16, 2013. On July 15, 2013, San Bernardino County Children and Family Services (the Department) filed a supplemental petition (Welf. & Inst. Code, § 387)¹ alleging the disposition had "not been effective in the protection or rehabilitation of the child" due to Mother having violent interactions with Father, Mother allowing Father into her apartment, and Mother becoming homeless. Since the notice of appeal for the prior case was filed before the supplemental petition (§ 387), this court did not address the supplemental petition or any findings related to the supplemental petition in our prior opinion.

¹ All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

While the prior appeal was pending in this court, the juvenile court proceeded on the supplemental petition related to changing the disposition. (§ 387.) On July 16, 2013, the juvenile court found the Department established a prima facie case that the prior disposition was unsuccessful in protecting J.C., and ordered J.C. be removed from Mother's physical custody.

On August 28, 2013, while the prior appeal was still pending in this court, Judge Kersey held a hearing on the supplemental petition. (§ 387.) At the hearing, the juvenile court found true the allegations in the supplemental petition (§ 387) and found J.C. "comes within [section] 387." Again, section 387 relates to changing a disposition order. (§ 387, subd. (b).) The court found the prior disposition was unsuccessful in protecting or rehabilitating J.C. The court found Mother failed to make progress in her case plan and terminated reunification services.

On January 21, 2014, this court issued its opinion in the prior appeal, reversing the original jurisdiction findings (§ 300) related to J.C. On March 28, Judge Kersey held a hearing in the case. At the hearing, the juvenile court concluded it had jurisdiction over J.C. in relation to Mother due to the findings on the supplemental petition (§ 387). Mother's attorney argued a section 387 petition relates to disposition, not jurisdiction. Mother's attorney asserted the correct procedure would be to file a section 300 petition to reestablish jurisdiction. The Department argued the court still had jurisdiction due to the findings against Father. The court concluded it still had jurisdiction and scheduled a hearing to terminate Mother's parental rights. On May 5, Judge Kersey terminated Mother's and Father's parental rights to J.C.

Mother raises 21 issues on appeal, but has grouped the issues into eight categories. In the first cluster, Mother contends the juvenile court was biased. In the second grouping, Mother asserts the juvenile court erred by treating the prior appellate opinion in the case (the reversal) as harmless. In the third collection, Mother contends the juvenile court lacked jurisdiction. In the fourth cluster, Mother asserts a section 387 petition cannot confer jurisdiction upon a juvenile court. Also within the fourth cluster, Mother contends there is not substantial evidence supporting the findings on the supplemental petition (§ 387).

In the fifth cluster, Mother contends the juvenile court had no basis for denying reunification services. In the sixth collection, Mother asserts her failure to file a writ petition in connection with the section 387 petition did not forfeit these issues, but if it did, then her writ counsel rendered ineffective assistance. In the seventh grouping, Mother contends the juvenile court erred by denying her request to change a court order (§ 388). In the eighth cluster, Mother contends the cumulative effect of the alleged errors requires the judgment be reversed. We affirm the judgment.²

² The Department filed a separate motion to dismiss Mother's appeal on the bases of the issues being barred by res judicata, the issues being moot, and the appeal being frivolous. We deny the motion to dismiss. In support of the motion to dismiss, the Department requests this court take judicial notice of (1) our tentative opinion in Mother's prior appeal; (2) the declaration of an attorney for the Department; and (3) a minute order from a criminal case wherein Mother is a defendant. We grant the request as to the tentative opinion and the minute order, as required by law. (Evid. Code, §§ 452, subd. (d), 453.) We deny the request as it pertains to the declaration. (Evid. Code, §§ 451, 452.)

FACTUAL AND PROCEDURAL HISTORY

A. PRIOR CASE IN THE JUVENILE COURT

The procedural history set forth in this subsection was considered in the prior appeal. We include it again in this case in order to provide context for the current issues.

1. *MOTHER'S THREE OLDER CHILDREN*

In 2011, Mother had three children: (1) A.P., a female born in 2007; (2) N.P., a female born in 2008; and (3) N.P.J., a male born in 2010. On May 26, 2011, the Department filed a petition (§ 300) alleging Mother failed to protect the three children (1) by leaving N.P. and N.P.J. in the care of their maternal grandmother, who was a known drug abuser; (2) by leaving N.P. and N.P.J. in Grandmother's home where drugs and drug paraphernalia were within the children's reach; (3) by leaving A.P. in a home with D.B. (Mother's brother) who had a tendency to engage in domestic violence and possibly child molestation; (4) because the children's maternal great-grandmother allowed D.B. to be in the home with A.P. despite D.B.'s criminal history; (5) because A.P. remained out of Mother's custody for 18 months, due to Mother's substance abuse; (6) because Mother suffered from drug addiction, which impaired her judgment; (7) because N.P.S., who was the presumed father of N.P. and N.P.J., had a criminal history, which demonstrated his lifestyle was not conducive to caring for children; (8) because N.P.S. suffered from drug addiction, which impaired his judgment; (9) R.R., who was A.P.'s alleged father, suffered from drug addiction, which impaired his

judgment; and (10) R.R. should have known A.P. was at risk of abuse or neglect, but failed to act.

Also included in the petition were allegations that Mother, N.P.S., and R.R. left the children without any provisions for support. Mother provided no support because she was incarcerated. R.R. and N.P.S. did not provide support because their whereabouts were unknown.

On August, 18, 2011, at the jurisdiction hearing, the court found true the allegations that Mother failed to protect: (1) N.P. and N.P.J, by leaving them in the care of their maternal grandmother, who was a known drug abuser; (2) N.P. and N.P.J. by leaving them in a home where drugs and drug paraphernalia were within the children's reach; (3) A.P. because the child remained out of Mother's custody for 18 months, due to Mother's substance abuse; and (4) all three children because Mother suffered from drug addiction, which impaired her judgment. The court also found Mother left the children without provisions for support when she was incarcerated.

2. JURISDICTION OVER J.C.

J.C. is Mother's fourth child. J.C. is female and was born in February 2013. M.C. (Father) is J.C.'s presumed father. On February 19, 2013, the Department filed a petition on behalf of J.C. The Department alleged Mother and Father failed to protect J.C. because: (1) Mother engaged in domestic violence with Father, which placed J.C. at risk of physical or emotional abuse; (2) Mother had a history of substance abuse, which placed J.C. at risk of abuse or neglect; (3) Mother had unsafe relationships that were physically and emotionally unhealthy; (4) Mother failed to reunify with A.P., N.P.,

and N.P.J.; (5) Father engaged in domestic violence with Mother, which placed J.C. at risk of physical or emotional abuse; (6) Father suffered from drug addiction, which impeded his ability to care for J.C.; and (7) Father had a criminal history and pattern of behavior that were not conducive to caring for a child. It was further alleged that J.C.'s half siblings, A.P., N.P., and N.P.J., were abused or neglected by Mother thus placing J.C. at similar risk of abuse or neglect.

Around the time of J.C.'s jurisdiction hearing, a Department social worker found J.C. was "adequately cared for in [Mother's] custody." Mother attended Inland Behavioral and Health Services (IBHS) programs Monday through Thursday from 8:00 a.m. to 1:30 p.m. Mother visited the three older children one hour per week. The social worker found Mother was "doing[] positive things in her life."

Nevertheless, the social worker was concerned about Mother's history and Father's behavior, although Father no longer lived with Mother. The social worker feared Mother might not be living "the forthright, transparent life of a person truly in recovery," which caused the social worker to have "grave concerns" about Mother. The social worker believed Mother's sobriety was "tenuous," because Mother "has no functional family and no true support system," other than the people she met at IBHS. The social worker feared Mother would become "bored and/or stressed" caring for J.C. and then rely on people who were negative influences on Mother. The social worker speculated that Mother and Father could be having "clandestine visits," which caused the social worker to fear Mother would relapse into drug use or engage in another domestic violence incident. The social worker was also anxious about the possibility

Mother would not be able to afford her apartment when the rent ran out in May 2013; the rent was prepaid from money left by Mother's grandfather.

At a hearing on May 13, 2013, a Department social worker testified. The social worker confirmed Mother tested negative for drugs for two years; J.C. also tested negative for drugs at birth. The social worker confirmed Mother had appropriate housing. The social worker visited Mother's home "[m]any times," including late at night, but never found Father in the apartment.

Nevertheless, the social worker believed the four children should not be returned to Mother's care based upon the social worker's concerns about Mother's future. The social worker testified, "[T]he amount of work that it is to try to maintain four children is high, and I worry that it would be too difficult to do, and I think it could sink her ship, so to speak."

In regard to J.C.'s original jurisdiction hearing (§ 300), the juvenile court found true all the allegations in the petition; however, the court struck the language involving "domestic" violence in relation to Mother and Father, thus finding only that Mother engaged in violent behavior, as opposed to domestic violence involving Father. In regard to disposition, the juvenile court allowed Mother to retain physical custody of J.C. on a plan of family maintenance. The court (Judge Kersey) explained Mother "got a break," in that the judge who presided over the detention hearing (Judge Tavill) permitted J.C. to stay in Mother's physical custody. Judge Kersey said that if she had presided over the detention hearing, then J.C. would have been removed and "stayed

removed” at the jurisdiction hearing. The juvenile court terminated Mother’s parental rights to the three older children.

B. PRIOR APPEAL

In Mother’s prior appeal, she asserted substantial evidence did not support the jurisdictional findings related to J.C. In particular, Mother asserted none of the findings were connected to J.C. being at risk of harm. Mother argued the findings were based solely on speculation and fears about Mother’s future, rather than evidence of Mother’s current circumstances. This court agreed with Mother. This court concluded there was no evidence supporting a finding that J.C. was at a substantial risk of harm in Mother’s care. Father did not appeal, so we noted our disposition only concerned Mother. In the prior appeal, the notice of appeal was filed on May 16, 2013. Our final opinion in the prior appeal was filed on January 21, 2014.

C. SECTION 387 SUPPLEMENTAL PETITION

1. *REMOVAL*

On July 15, 2013, while the prior appeal was pending in this court, the Department filed a section 387 supplemental petition concerning J.C. In the supplemental petition, the Department alleged: “The previous disposition has not been effective in the protection or rehabilitation of the child” because (1) Mother “continued to engage in domestic violence” with Father, thus placing J.C. at risk of physical or emotional abuse or neglect; (2) Mother “has been unable to renew her lease due to the domestic violence and financial problems[. Also she] has been unable to arrange suitable housing resulting in her and the child becoming homeless”; (3) Mother allowed

Father “to be at the apartment in violation of the juvenile court order and she failed to inform the social worker that [Father] had been present at the apartment, thereby placing the child at risk of harm”; (4) Father “continued to engage in domestic violence” with Mother, thus placing J.C. at risk of physical and/or emotional abuse and neglect; and (5) Father violated the juvenile court’s order by going to Mother’s apartment.

In a detention report, a Department social worker explained San Bernardino County sheriff’s deputies “had been called on several occasions” in regard to Father being at Mother’s apartment complex. On March 29, security contacted law enforcement because a male and female were “engaging in a loud altercation” in Mother’s apartment. When deputies arrived, Mother and Father were leaving, so no report was taken. On March 30, a neighbor called to report Father was taking property from Mother’s apartment. On April 12, Father ““barged into [Mother’s apartment] and made threats.”” Father was gone when deputies arrived. Deputies advised Mother to take J.C. and leave the apartment for the night. On April 27, Mother contacted deputies to report someone had thrown a rock and broken her car window. On May 19, apartment security called to report Father was trespassing at Mother’s apartment. Father left before deputies arrived. On June 27, Mother contacted deputies because Father was at her apartment ““banging on the window.”” Mother said Father broke a window to gain access to her apartment, took property from the apartment, and then left.

A Department social worker spoke to an anonymous person at the apartment complex’s management company. The anonymous person said Father is regularly at the apartment complex and “is known to be in a relationship with [Mother].” The

anonymous person said Mother and Father have been “heard on numerous occasions arguing and fighting.” Mother denied being in a relationship with Father. Mother’s lease expired on June 30. Mother was unable to renew her lease due to financial issues and the management company deciding not to rent to her, due to the problems involving Father. At the time of the detention report (July 2013) Mother did not have housing. The Department removed J.C. from Mother’s physical custody and placed J.C. in the home where her three older half siblings were residing.

The detention hearing took place on July 16, 2013, and was presided over by a judge other than Judge Kersey. The court found a prima facie case had been established that J.C. “comes within [section 387].” The court ordered J.C. be detained outside of Mother’s and Father’s physical custody.

2. *FINDINGS ON THE SUPPLEMENTAL PETITION (§ 387) AND
REQUEST TO CHANGE A COURT ORDER (§ 388)*

On August 2, 2013, the Department filed its Jurisdiction/Disposition Report. In the report, the social worker faulted Mother for failing to seek a restraining order against Father. The social worker concluded, “[N]othing can be done to make [Mother and Father] honorable, trustworthy, or people who would be safe for the child to be in the presence of.”

On August 28, the Department filed an addendum report. The report reflected Mother stopped attending her classes at IBHS. Mother and Father missed visits with J.C. On August 23, Mother and Father missed a visit, so a Department social worker called the telephone numbers she had for Mother and Father. An unidentified person

who answered one of the telephone calls said Father “had been essentially living” with Mother when Mother was receiving family maintenance services—when Mother and Father were not supposed to be having contact. The unidentified person said Mother “was observed to have a black eye and other marks and bruises and there were occasions when the child was in the middle of the altercations.” Additionally, the unidentified person reported Mother “was observed to be beaten so badly by [Father] in the presence of the child that she urinated on herself.” The unidentified person said when someone advised Mother to leave Father, Mother refused explaining that she loves Father. The unidentified person also accused Mother of regularly consuming alcohol while participating in the substance abuse treatment program at IBHS, and of begging for money with J.C. at a liquor store.

The social worker concluded the information from the unidentified person indicated Mother and Father had “a profound disregard” for the court’s order. The social worker further concluded “[M]other and [F]ather appear to have no concern about doing what is in the best interest of the child.”

Also on August 28, the Department filed a request to change a court order. (§ 388.) The Department requested the juvenile court change its orders granting Father reunification services and granting Mother family maintenance services; the Department requested all services be terminated.

On August 28, the juvenile court held a hearing in the matter. The court addressed the supplemental petition (§ 387) and the Department’s request to change a

court order (§ 388). At the hearing, the following exchange occurred between the court and Mother's juvenile court attorney, Mr. Lai (Lai):

Court: "With that being said, Mr. Lai, you have evidence to present?"

"Mr. Lai: I would call the social worker.

"The Court: On the issue of the 388 is granted. Social worker, please."

The social worker then proceeded to testify. The social worker discussed the information in the report, such as the allegations of violence between Mother and Father and the allegations Mother was drinking alcohol while in substance abuse treatment. The social worker believed Mother failed to benefit from services because Mother (1) did not show "acceptance of [her] problems"; (2) did not take "responsibility for [her] problems"; (3) did not "address" her problems; and (4) did not "uph[o]ld the court order to keep the child safe."

The social worker explained that Mother stopped attending substance abuse counseling after the Department removed J.C. from Mother's physical custody. The social worker had not spoken to Mother about the drinking allegations because they kept missing one another. The social worker had met with Mother at least once per month for a year, but never noticed alcohol on Mother's breath. The social worker said the information about Mother drinking came from "a person in the apartment complex."

Mother also testified at the hearing. Mother explained Father would come to her apartment complex unannounced because Father knew multiple people at the complex. Mother would, in turn, contact law enforcement. Mother said the Department social worker did not advise Mother she was out of compliance with the family maintenance

plan, and did not speak to Mother about the allegations involving Father. Mother said law enforcement advised her to get a restraining order against Father. Mother was in the process of applying for a restraining order when J.C. was removed.

Mother said she was living with her father and planned to continue residing with him. Mother admitted missing a visit on August 20 due to “[t]he bus.” Mother tried calling the Department collect to say she would miss the visit, but could not reach the social worker. Mother admitted she stopped participating in substance abuse treatment when J.C. was removed. Mother explained she stopped going because she was “discouraged” after J.C.’s removal. Mother would return to a substance abuse treatment program, if it meant she could regain custody of J.C. Mother believed Father had violent tendencies; she ceased her relationship with him. Mother admitted having loud arguments with Father in the past, but denied he ever struck her. Mother noted Father was not with her in court as evidence she was no longer in a relationship with him.

Toward the end of the testimony, the court explained it was trying to determine “whether or not [Mother] should continue to—[Mother] should be offered services.” In regard to argument, the attorneys argued about the request to change a court order, i.e., whether Mother and Father should continue to receive services. The court then made findings on the section 387 supplemental petition. The court found all the allegations in the supplemental petition to be true, and that J.C. “comes within [section] 387(s).” There is not a subdivision (s) in section 387, so we infer the subdivision portion is a typographical error. The court found the “[p]revious disposition was unsuccessful [in] the protection [and] rehabilitation of the child.” The court further found that “clear and

convincing evidence shows the child should be removed from mother, father.

Substantial danger to the minors [*sic*] for the health, safety, protection, or physical or emotional well-being of the minor or would be if returned to parents['] custody.” The court ordered J.C. removed from Mother’s and Father’s physical custody.

The court also found Mother and Father failed to complete their case plans and failed to benefit from their case plans. The court held it was in the best interests of J.C. to terminate Mother’s and Father’s services. Thus, the court granted the Department’s request to change a court order, and terminated Mother’s and Father’s services.

The juvenile court then went on to discuss terminating parental rights. The court said, “It’s in the child’s best interest to terminate parental rights at [a] .26 hearing.” The court explained to Mother, “[Y]ou’re ordered to appear in this department at 8:30, December 18th for this .26 hearing which is a hearing to terminate your parental rights.”

D. WRIT PETITION

On August 28, 2013, Lai filed a Notice of Intent to File A Writ Petition. On October 7, this court filed a letter from Lai. In the letter, Lai informed this court that he reviewed the record and “determined that there are no legal or factual issues upon which to base a Petition for Extraordinary Writ pursuant to [California Rules of Court,] Rule 39.1B.” We infer counsel meant California Rules of Court, rule 8.452. Pursuant to Lai’s letter, this court dismissed Mother’s writ petition on October 16, 2013.

E. DISMISSING THE ALLEGATIONS

On October 23, 2013, Mother was arrested for possessing methamphetamine. On November 1, Mother pled no contest to a charge of possessing a controlled substance.

(Health & Saf. Code, § 11377, subd. (a).) Mother was placed on 36 months of supervised probation, with the condition she serve 180 days in the San Bernardino County Jail. On December 11, Mother's incarceration condition was modified to work release.

On December 9, the Department filed a report for the Welfare and Institutions Code section 366.26 hearing, concerning terminating parental rights. The report reflected J.C. was still in her foster home. J.C. was nine months old and bonding with her three older half siblings, who were also in the home. J.C.'s foster parents were interested in adopting her. On December 28, Mother was arrested and charged with being under the influence of a controlled substance. (Health & Saf. Code, § 11550, subd. (a).)

As set forth *ante*, this court's opinion in the prior appeal was filed on January 21, 2014. In that opinion, this court reversed the jurisdictional findings as they pertained to Mother. The termination hearing (§ 366.26) was scheduled for March 25, 2014. On March 25, the juvenile court said, "Case is set today for contested 26. Admit the reports." Lai said he was not prepared to proceed because he was trying to understand the impact of the jurisdiction findings being reversed.

The Department's attorney, Mr. Moret, asserted the appellate court did not reverse the jurisdictional findings related to Father, who did not appeal, so the juvenile court still had jurisdiction over J.C. The court remarked, "jurisdiction has been handled" due to the findings on the supplemental petition (§ 387). Lai again asked for a continuance because he was "not prepared to go forward." Lai said he did not have a

copy of the remittitur from the appellate court. The juvenile court continued the hearing to March 28.

On March 28, the juvenile court asked if Mother wanted to testify regarding termination of her parental rights. Lai said he had procedural issues that he would like to address. In particular, Lai said Father's attorney would be requesting a continuance because Father was in state prison and needed to be transported. Next, Lai said the supplemental (§ 387) petition and the request to change a court order (§ 388) were based upon the underlying original jurisdiction findings (§ 300), and the appellate court reversed those original findings (§ 300), so the termination hearing could not proceed. Lai asserted the section 387 supplemental petition was related to disposition and involved different standards than a jurisdiction petition. Lai argued, "[T]he Department has to either file a new [section] 300 Petition or that we have to go back and revisit juris and dispo which effects that the Department can proceed on a [section] 387 as to [Mother]."

The Department responded, "Well, that legal argument is just flat out wrong." The Department argued, "So it is well established that the Court only has to have one allegation, and it can be for one parent. And the Court did not overturn the jurisdictional findings regarding the father, only the mother. [¶] And subsequent to that, the Court found true [section] 387 jurisdictional dispositional findings regarding the mother which was not addressed, not overturned by the Appellate Court."

Lai asserted a section 387 petition does not relate to jurisdiction, rather, it concerns the child's placement, i.e., disposition. Lai contended the court needed to

“address the legalities of going forward on the [termination hearing].” Father’s attorney, Mr. Guhin, argued Father was a non-custodial parent and therefore, the petition could not exist if the allegations against Mother were reversed. In other words, the removal occurred because of how Mother was allegedly caring for J.C. The allegations against Father, since he was non-custodial, were only incidental to the allegations against Mother. As a result, if J.C. should not have been removed from Mother’s care, due to the allegations being incorrect, then a petition could not have been filed against Father because Father did not have physical custody of J.C. Guhin said, “It is just a civil version of fruit of the poisonous tree. Without the first error, there could not have been the second error.”

The juvenile court explained the original jurisdiction findings were reversed, but while that appeal was pending the section 387 supplemental petition was filed, so “there is jurisdiction on that issue. Mother was given reunification services. Then after that, setting of the 26.^[3] [¶] So right now, Mr. Lai, the only thing before the Court is the 387 Petition with no writ, no nothing questioning that 387 or the findings or the disposition with reunification services. That is what I have. I have a 387 with a trial, reunification services on dispo.”

Lai reminded the juvenile court that no services were granted following the section 387 hearing, rather, services were terminated. Lai explained that was part of the reason the section 387 supplemental petition could not be treated as a jurisdiction

³ As set forth *ante*, Mother’s services were terminated at the same hearing in which the section 387 allegations were found true.

petition, because if it were a jurisdiction petition then services should have been considered rather than terminated. The court looked back at the procedural history of the case. The court asserted that on August 28, the date of the section 387 and section 388 hearing, the court made “a jurisdictional finding.” Lai responded that a section 387 supplemental petition is different than a section 300 (jurisdiction) petition. Lai explained that the petitions involve different issues. For example, at a section 300 hearing, services would have been at issue.

The Department asserted there was basis for not awarding Mother services because her parental rights were terminated as to her three older children. Lai explained that argument could be made if a new section 300 petition were filed, but the Department needed “to file the proper paper work.”

The court said to Lai, “I am still not sure what you are asking for, because those findings were found true. It is not pending appeal on that [section 387] petition. It is just before the Court for a 26 [termination hearing], so I am not sure exactly what you are asking.” Lai said he was suggesting “that the Court should not be going forward on the 26.” The court asked what Lai wanted to happen. Lai said, “We go back and . . . the department has to either file a new 300 Petition or try to proceed on the prior one that was reversed and that my client would be entitled to services pending the litigation of the 300 case.”

The Department asserted the section 387 petition was still in place. Lai responded, “[A]t the time of the 387, the 300 petition hadn’t been reversed.” The Department said the Court of Appeal did not reverse jurisdiction as to Father. The

Department argued, “The Court still has jurisdiction. It can rest on a single ground. It can rest on a single parent.”

The juvenile court said, “[T]he Court will proceed with the 26 hearing once [Father is] transported. But you would not convince the Court that the 26 should be vacated, the Department should be forced to file a new 300 Petition, and that the mother should get family reunification services. [¶] Because procedurally and before the Court is the 387 Petition having been found true and the 26 setting, which is appropriate. In the 300 jurisdiction, there was jurisdiction over the minor. The one against the mother or pertaining to the mother were reversed, not the ones for the father giving the court jurisdiction over the minor. [¶] So you’ve not convinced the Court to do anything such as vacating the 26, 300 Petition, because procedurally, I don’t see how you can get there.”

The court told Lai he could brief the issue, and then continued the matter to May so Father could be transported. The Department suggested the juvenile court vacate the original jurisdiction findings (§ 300) as to Mother, pursuant to the appellate court’s opinion. The juvenile court “dismissed” the original allegations (§ 300) pertaining to Mother. The court explained that jurisdiction over J.C. would be maintained pursuant to the findings against Father.

F. TERMINATION AND REQUEST TO CHANGE A COURT ORDER

On April 15, 2014, Mother filed a Request to Change a Court Order. (§ 388.) Mother asserted the changed circumstance was the appellate court’s reversal of the original jurisdiction (§ 300) findings. Mother requested the juvenile court order the

Department to provide Mother with reunification services. Mother asserted the change was in J.C.'s best interests because Mother had a family support network and could provide a home for J.C. Mother included points and authorities with the Request to Change a Court Order.

In the points and authorities, Mother asserted a section 387 supplemental petition could not be substituted for a section 300 petition. Mother argued a section 387 supplemental petition concerns placement, i.e., disposition, while a section 300 petition relates to jurisdiction. Mother further contended a section 387 supplemental petition concerns modifying a previous order, therefore, if the prior order is vacated or dismissed then the section 387 findings are a nullity because there was technically nothing to modify. Mother argued the Department needed to file a new section 300 petition so the court could then determine if Mother posed a risk of detriment to J.C. Mother asserted her due process rights to jurisdiction and disposition hearings had been violated by the juvenile court proceeding to termination on the section 387 supplemental petition.

The Department responded to Mother's Request to Change a Court Order. The Department asserted the juvenile court retained jurisdiction over J.C. due to the findings against Father. The Department denied it was substituting a section 387 supplemental petition for a section 300 petition. The Department contended the section 300 petition concerning Father remained in place, and "even if [the Department] was required to justify section 300 jurisdiction based upon Mother's conduct, [the Department] did so.

The section 387 proceedings proved Mother's unprotective conduct, which also encompassed the time before [the juvenile] court took section 300 jurisdiction."

The Department argued that jurisdictional findings were made at the hearing on the section 387 supplemental petition. The Department asserted the allegations in that supplemental petition began with "the preamble that [the] 'disposition has not been effective in the . . . protection' of [J.C.]" The Department asserted the findings at the section 387 hearing were therefore similar to the "failure to protect" findings that would need to be made at a section 300 (jurisdiction) hearing. The Department argued Mother was "exalt[ing] form over substance." The Department asserted the court found the need to remove J.C. from Mother's physical custody at the section 387 hearing, so Mother's due process rights were not violated. The Department asserted the findings related to the section 387 petition were final because this court dismissed the writ associated with the section 387 findings.

On April 24, 2014, the Department submitted an addendum report. The report reflected that, on January 5, Mother was charged with theft of personal property. (Pen. Code, § 484.) Also, on March 7, Mother was arrested for possessing methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) The Department recommended the juvenile court deny Mother's request for reunification services, and that the court terminate Mother's reunification services.⁴

⁴ The juvenile court had already terminated Mother's services on August 28, 2013, at the hearing on the supplemental petition (§ 387) and the Department's request to change a court order (§ 388).

On May 5, the juvenile court held a hearing on (1) Mother's request to change a court order (§ 388), and (2) termination of parental rights (§ 366.26). At the hearing, Mother's attorney, Lai, argued that a section 387 petition is different than a section 300 petition. Lai asserted that, in order for a section 387 petition to substitute for a section 300 petition, services need to be offered or considered. Lai explained Mother had not received services since the court terminated services in August 2013. Lai argued that, following the reversal of the jurisdiction findings, the way to proceed "would be to file an amended [section] 300 petition."

The juvenile court explained it had jurisdiction over J.C. due to the findings against Father. The court characterized Lai's argument as "asking the Court for equity." The court found Mother was not participating in counseling or providing clean drug tests. The Department asserted the juvenile court was correct. The Department contended Mother's request to change a court order was "a request to take us back to some prior hearing and start the case over again." The Department asserted the argument was "legally incomprehensible." In regard to equity, the Department asserted Mother was using drugs and stealing. The Department contended there had not been a change in circumstances.

J.C.'s attorney asserted there was no factual difference between a section 387 supplemental petition and a section 300 petition. However, the attorney could not say if there was a legal difference between the two petitions. J.C.'s attorney asserted that if a section 300 petition should have been filed as to Mother, then it was harmless that the court proceeded on a section 387 petition because the factual findings were essentially

the same. The juvenile court said Mother had not shown changed circumstances. Lai explained the changed circumstance was the appellate court's reversal of the original jurisdiction (§ 300) findings. Lai explained the correct procedures needed to be followed. Lai explained that, ultimately, the juvenile court may make the same orders, but the correct procedures need to be followed. The Department asserted Lai was failing to take into account the findings on the section 387 supplemental petition.

The juvenile court found the appellate court's reversal of the jurisdiction findings was not a change in circumstances "because the [juvenile c]ourt continued to have jurisdiction over the minor, and the mother continued to be in the community and available to improve her circumstances." The court also found it was not in J.C.'s best interests to grant Mother reunification services. The court denied Mother's request to change a court order (§ 388).

In regard to terminating parental rights, Lai requested the juvenile court apply the parent-child bond exception and not terminate parental rights. The court found J.C. was likely to be adopted, and terminated Mother's and Father's parental rights.

DISCUSSION

A. JUDICIAL BIAS

1. *PROCEDURAL HISTORY*

a) Prior Opinion

In our prior opinion, we addressed the issue of Judge Kersey's objectivity. We briefly summarize that discussion here. At the jurisdiction and disposition hearing on the original petition (§ 300), the court said to Mother, "I can't believe that you have four

kids and [have] yet to focus on your four kids. You seem quite happy losing children and then just having another one and lying about it and bucking the system. That's what you do." We commented that Judge Kersey's remarks were unnecessarily harsh, and that she made mistakes in the jurisdictional findings; however, since Judge Kersey permitted J.C. to remain in Mother's physical custody, it appeared Judge Kersey was making impartial decisions. As a result, we did not disqualify Judge Kersey from continuing to preside over further hearings in the matter.

b) Current Case

Mother testified at the hearing on the supplemental petition (§ 387). While Mother was testifying, the following exchanges occurred:

"[Department's Attorney:] There is domestic violence in your relationship; is that true? [¶] [Mother:] No, that's not true. [¶] The Court: No domestic violence and he's never beaten her up."

The Department's attorney asked two more questions. During Mother's response to the second of the two questions, Mother said, "You guys can smirk at me all you want." The Department's attorney asked two more questions, at which point the juvenile court decided to look in a file for information about a particular date. The Department's attorney's question was still pending, and Mother was apparently speaking, when the court said, "Quit talking. There's no question. Whatever you were mumbling about is stricken." Contrary to the court's position, there was a question pending. Specifically, the exchange went as follows:

“[Department’s Attorney:] You’re saying this is back in February or so that you were last in a relationship with [Father]?”

“The Court: I can go through the file real quick but I know he was here in February. He was here March 21st in court and not since then. [¶] Quit talking. There’s no question. Whatever you were mumbling about is stricken.” Mother’s answer to the question was not recorded in the reporter’s transcript.

As the cross-examination continued, the following exchanges took place:

“[Department’s Attorney:] [Father’s] never been in your apartment that you—

“[Mother:] No, he’s never been in my apartment.

“The Court: There’s another, [Department’s Attorney], not in her apartment, he’s never beaten her up and doesn’t engage in domestic violence.”

“The Court: Nobody ever told you . . . [¶] . . . [¶] . . . people in the complex or landlord or anything like that ever said, hey that . . . [Father] keeps coming around the [apartment] complex looking for you?

“[Mother:] No.

“The Court: Okay. The answer is no, which goes along with there’s no domestic violence, he doesn’t beat her and he doesn’t come around the complex.”

The juvenile court posed a series of questions to Mother. Two of the questions were as follows:

“The Court: Did you also realize that you have been observed to be beaten so badly by [Father] in the presence of the child that you urinated on yourself, black eye and other marks and bruises, are you going to admit that altercation?”

“[Mother:] I don’t even recall that.

“The Court: Are you going to admit that today, black eye, bruises, urinating on yourself because [Father] beat you, are you going to admit that one today for me?

“[Mother:] I don’t even recall, Judge.”

The judge then made a series of comments. While Mother was still on the witness stand, the court said Mother “didn’t learn anything” from the classes at IBHS. The court also said Mother was not “protective of the baby.” At which point Mother responded, “Yes, I was, your Honor. I feel this is an injustice. I have an appeal case with that case.” After Mother again refused to make an admission, saying, “I’m not going to admit something I don’t feel is true at all,” the court asked if any of the attorneys wanted to question Mother further. The attorneys declined, and Mother was excused from the witness stand.

When the court scheduled the hearing to decide whether to terminate Mother’s parental rights, the court said, “[Mother,] you’re ordered to appear in this department at 8:30, December 18th for this .26 hearing which is a hearing to terminate your parental rights.” Additionally, when scheduling the termination hearing, the court said, “It’s in the child’s best interest to terminate parental rights at a .26 hearing.”

2. ANALYSIS

a) Bias

Mother contends Judge Kersey lacked objectivity in presiding over the supplemental petition hearing. (Welf. & Inst. Code, § 387.) In Mother’s appellant’s opening brief, she cites Code of Civil Procedure section 170.1, subdivision (c).

That subdivision provides, “At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.” (Code Civ. Proc., § 170.1, subd. (c).) We interpret this citation as a request for this court to consider whether the interests of justice require further proceedings to be heard before a judge other than Judge Kersey.

A party seeking disqualification of a judge “need not show actual bias because the Legislature sought to guarantee not only fairness to individual litigants, but also ‘to ensure public confidence in the judiciary’ [citation], which ““may be irreparably harmed if a case is allowed to proceed before a judge who *appears* to be tainted.”” [Citation.] A party has the right to an objective decision maker and to a decision maker who appears to be fair and impartial.” (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 390 (*Wechsler*).)

“A judge shall be disqualified if any one or more of the following are true: [¶] . . . [¶] For any reason: [¶] (i) The judge believes his or her recusal would further the interests of justice. [¶] (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial. [¶] (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” (Code Civ. Proc., § 170.1, subd. (a)(6)(A).) Since we are not addressing Judge Kersey’s beliefs, we focus on the third option—whether a reasonable person aware of the facts might entertain a doubt the judge would not be able to be impartial. The “reasonable person” standard refers to “the reasonable layperson.” (*Wechsler, supra*, 224 Cal.App.4th at p. 391.)

“Potential bias and prejudice must clearly be established [citation] and statutes authorizing disqualification of a judge on grounds of bias must be applied with restraint. [Citation.] ‘Bias or prejudice consists of a “mental attitude or disposition of the judge towards [or against] a party to the litigation”’ [Citation.]” (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) Evidence of strained relations between a judge and an attorney for a party does not equate with evidence of bias. (*Ibid.*) The facts of what occurred in the courtroom are undisputed. Therefore, we apply the de novo standard of review. (*Wechsler, supra*, 224 Cal.App.4th at pp. 391-392.)

Judge Kersey’s comments were harsh, sarcastic, disrespectful and unnecessarily hurtful. While the comments display a lack of judicial temperament, in that they appear mean-spirited, we cannot conclude that Judge Kersey’s decision-making was affected. From the record, it appears Judge Kersey was evaluating the evidence and making comments based upon the evidence. So, Judge Kersey’s decisions were not predisposed against Mother; however, the manner in which Judge Kersey delivered those remarks leaves much to be desired in terms of judicial decorum.

As an example, we address the following exchange:

“[Department’s Attorney:] [Father’s] never been in your apartment that you—

“[Mother:] No, he’s never been in my apartment.

“The Court: There’s another, [Department’s Attorney], not in her apartment, he’s never beaten her up and doesn’t engage in domestic violence.”

“The Court: Nobody ever told you . . . [¶] . . . [¶] . . . people in the complex or landlord or anything like that ever said, hey that . . . [Father] keeps coming around the [apartment] complex looking for you?

“[Mother:] No.

“The Court: Okay. The answer is no, which goes along with there’s no domestic violence, he doesn’t beat her and he doesn’t come around the complex.”

The juvenile court’s summaries of Mother’s testimony are unnecessary and the comments, such as “[t]here’s another,” are disrespectful to Mother. However, the juvenile court was primarily commenting on the evidence and/or summarizing the evidence. (See *People v. Linwood* (2003) 105 Cal.App.4th 59, 73 [court may comment on evidence].) Notably, the court asked Mother a question about her testimony, i.e., whether anyone told Mother about Father being at the apartment complex. Given that the juvenile court listened to the evidence and asked questions, we conclude judicial bias has not been established. In particular, a reasonable person witnessing the hearing may conclude Judge Kersey was unnecessarily harsh and lacking judicial etiquette, but would not conclude her decision making had been affected.

b) Right to be Heard

Mother contends Judge Kersey’s comments impeded her right to be heard in a meaningful manner. Mother does not assert she would have given different information if she had been before another judge. Rather, Mother asserts Judge Kersey interpreted the evidence in a biased manner, thus impeding Mother’s right to be heard. For example, Mother asserts the evidence reflected Father went to Mother’s apartment,

banged on a window, broke the window, and Mother screamed; Judge Kersey interpreted this evidence as Mother inviting Father to her apartment.

We disagree that this finding reflects Mother was not heard in a meaningful manner because there was evidence supporting the juvenile court's finding. In particular, there was evidence reflecting Mother and Father were living with one another. From that evidence, the juvenile court could have concluded Mother had invited Father to be at the apartment. Because there is evidence supporting the juvenile court's conclusion, we cannot conclude the court was biased against Mother based upon this finding. In other words, it appears the court gave more credence to the Department's evidence than Mother's evidence, but that does not indicate bias, it indicates a weighing of the evidence.

c) Listening to Argument

Mother contends Judge Kersey decided the issue prior to hearing argument from Mother's attorney, Lai. On March 28, 2014, the juvenile court held a hearing to terminate Mother's parental rights. At the hearing, Lai argued there were jurisdictional problems due to the first appellate opinion reversing the original jurisdiction findings (§ 300) related to Mother. Lai explained that a section 387 petition could not be substituted for a section 300 petition.

After listening to Lai's argument, the juvenile court said, "So you've not convinced the Court to do anything such as vacating the 26, 300 Petition, because procedurally, I don't see how you can get there. [¶] So if you would like to brief it, you are more than welcome to brief it with some authority that says I am supposed to do

something other than what the Court of Appeals has told me to.” The court continued the hearing for 30 days to allow Father to be transported and then explained Lai was “more than welcome” “to file a motion or brief regarding the issue as to why [the juvenile court] should not follow the directives of the Court of Appeal.”

Contrary to Mother’s position, the juvenile court did not decide the issue without argument. The juvenile court listened to Lai’s argument but disagreed with him. The juvenile court then offered Lai the opportunity to file paperwork citing authority, so as to better explain the issue to the juvenile court. Accordingly, we are not persuaded that the juvenile court decided the issue without hearing from Mother’s counsel.

B. REVERSAL AS HARMLESS

Mother contends the juvenile court erred by treating the reversal of the jurisdiction findings as harmless.

As explained *ante*, on August 28, 2013, while the prior appeal was still pending in this court, Judge Kersey held a hearing on the supplemental petition (§ 387). At the hearing, the juvenile court found true the allegations in the supplemental petition (§ 387) and found J.C. “comes within [section] 387.” The court found the prior disposition, which placed J.C. with Mother, was unsuccessful in protecting or rehabilitating J.C. The court found Mother failed to make progress in her case plan and terminated reunification services. On January 21, 2014, this court issued its opinion in the prior appeal, reversing the original (§ 300) jurisdiction findings related to J.C.

A juvenile court may obtain jurisdiction over a child when one parent is an offending parent and the other parent is a suitable, non-offending parent. (*In re Jeffrey*

P. (1990) 218 Cal.App.3d 1548, 1554 (*Jeffrey P.*.) In the instant case, the juvenile court retained jurisdiction over J.C., despite the reversal, due to the unappealed jurisdictional findings involving Father.

“Unlike an original petition, a section 387 supplemental petition does not affect the jurisdiction of the court. However, the supplemental petition can have the same drastic result of removing the dependent child from his or her custodial parent. The standard for removal on a supplemental petition is the same as removal on an original petition: the agency must show by ‘clear and convincing evidence . . . [t]here is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor’ if left in parental custody ‘and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from [parental] custody.’ [Citations.]” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077.)

In the instant case, the juvenile court found the supplemental allegations (§ 387) to be true by clear and convincing evidence. Therefore, the juvenile court’s findings were akin to the findings that must be made for removal under an original (§ 300) petition. (*Kimberly R. v. Superior Court, supra*, 96 Cal.App.4th at p. 1077.)

The allegations in the supplemental petition (§ 387), related to Mother, were as follows: (1) Mother “continued to engage in domestic violence with the child’s father . . . placing the child at risk of physical and/or emotional abuse and neglect”; (2) Mother was “unable to renew her lease due to the domestic violence and financial problems and has been unable to arrange suitable housing resulting in her and the child becoming

homeless”; and (3) Mother allowed Father “to be at the apartment in violation of the juvenile court order and she failed to inform the social worker that the father had been present at the apartment, thereby placing the child at risk of harm.”

The juvenile court found the three allegations to be true. The first allegation is complicated by the reversal of the original jurisdiction findings because the word “continued” is used, as though referring to the now reversed findings. However, if that finding must be disregarded due to the procedural complications with the reversal, there is a second domestic violence finding in the second allegation, i.e., Mother lost her residence due, in part, to domestic violence. Thus, the juvenile court’s supplemental findings (§ 387) reflect: (1) Mother was engaged in domestic violence; (2) Mother and J.C. were homeless; and (3) Mother violated a juvenile court order by permitting Father to be at her apartment. Given these findings, which were made under the clear and convincing evidence standard, the reversal was essentially harmless. The reversal had little impact on the juvenile court case because the supplemental findings (§ 387) were the equivalent of findings on an original (§ 300) petition. So, when the original findings (§ 300) were reversed, the juvenile court could still proceed forward with the case due to (1) the jurisdiction findings related to Father and J.C., and (2) the supplemental findings (§ 387) involving Mother.

C. JURISDICTION

1. *JURISDICTION OVER J.C.*

Mother contends the juvenile court lacked jurisdiction over J.C. Specifically, Mother asserts the original jurisdiction findings (§ 300) were reversed, and the findings

related to Father did not reflect J.C. was at substantial risk of serious physical harm. Therefore, Mother reasons the juvenile court did not have jurisdiction over J.C.

Father did not appeal the original findings (§ 300) against him. Therefore, those findings were unaffected by the reversal in the prior appellate opinion. At the original jurisdiction and disposition hearing (§ 300), in May 2013, the juvenile court found “[c]lear and convincing evidence shows that the minor should be removed from the physical custody of the father in that there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the father’s physical custody.” The juvenile court found true allegations that (1) Father engaged in domestic violence with Mother; (2) Father had a “pervasive substance abuse problem, which impedes his ability to provide safe, stable, and consistent care, nurture and support to the child, [J.C.]”; and (3) Father had a criminal history and pattern of behavior that are not conducive to childrearing.

These findings concerning Father were not appealed. The time to appeal the findings has passed. (See Cal. Rules of Court, rule 8.406(a)(1) [60-day statute of limitations].) Accordingly, there were findings against Father reflecting J.C. was at substantial risk of suffering serious physical harm or illness due to Father’s failure to adequately supervise or protect the child. (§ 300, subd. (b).) The jurisdictional findings related to Father were sufficient to confer jurisdiction upon the juvenile court. (*Jeffrey P.*, *supra*, 218 Cal.App.3d at p. 1554 [one offending parent sufficient for jurisdiction].)

2. *LAW OF THE CASE*

Mother contends the doctrine of law of the case prevents the unappealed jurisdictional findings related to Father from affecting Mother.

“Under the law of the case doctrine, when an appellate court “states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout [the case’s] subsequent progress, both in the lower court and upon subsequent appeal” [Citation.] Absent an applicable exception, the doctrine ‘requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.’ [Citation.] As its name suggests, the doctrine applies only to an appellate court’s decision on a question of law; it does not apply to questions of fact. [Citation.] Nevertheless, it is potentially relevant here because an appellate court’s determination ‘that the evidence is insufficient to justify a finding or a judgment is necessarily a decision upon a question of law.’ [Citation.] Such a determination ‘establishe[s] as the law of the case that all the evidence adduced at the previous trial was insufficient as a matter of law to establish’ the finding or judgment. [Citations.]” (*People v. Barragan* (2004) 32 Cal.4th 236, 246.)

In the prior appellate opinion in this case, this court analyzed whether there was sufficient evidence to support the finding that J.C. was at substantial risk of harm due to Mother being a victim of Father’s domestic violence. As part of that discussion, this court wrote, “Thus, assuming the evidence supports a finding that Mother was a victim of domestic violence, it is difficult to infer J.C. is at a substantial risk of harm due to this

past suffering by Mother. There is no evidence indicating Mother still interacts with [Father] in an unsupervised environment. To reach the juvenile court's finding, we would have to infer Mother would see [Father] in an unsupervised location, [Father] would physically abuse Mother, and J.C. would somehow be present during that incident. The amount of attenuating inferences that needs to be made to support the court's finding push the finding into the realm of speculation and conjecture."

Again, Father did not appeal the findings against him. This court analyzed whether there was sufficient evidence reflecting J.C. was at risk in Mother's care. As a result, this court did not address whether J.C. was at risk in Father's care. Therefore, the jurisdictional findings related to Father and J.C. remained in place and it is possible that J.C. would be at risk in Father's care when she was not at risk in Mother's care (in terms of the prior appeal). For example, one could conclude that Mother, as the victim of Father's domestic violence, could protect J.C. if Mother stayed away from Father. However, if Father is the aggressor in the domestic violence incidents, then J.C. would be at risk in Father's care due to Father's violent behavior. In sum, we are not persuaded that the law of the case doctrine affects the juvenile court's jurisdiction in this case because we did not analyze the case as it related to Father.

D. JURISDICTION VIA A SECTION 387 PETITION

Mother contends juvenile court jurisdiction cannot be established via a supplemental petition (§ 387). As explained *ante*, the juvenile court had jurisdiction in this case due to the unappealed findings related to Father and J.C. (*Jeffrey P.*, *supra*, 218 Cal.App.3d at p. 1554 [one offending parent is sufficient for jurisdiction].)

Therefore, the question of whether jurisdiction may be established via a supplemental petition is moot in this case. (See *In re Marquis H.* (2013) 212 Cal.App.4th 718, 724 [purely academic questions are moot].)

E. SUBSTANTIAL EVIDENCE

1. *RISK FINDINGS*

a) Contention

Mother contends that, once the original findings (§ 300) were reversed, there was a lack of substantial evidence to support the findings on the supplemental petition (§ 387).

b) Standard of Review

Under the substantial evidence standard, “our power begins and ends with a determination as to whether substantial evidence exists, contradicted or uncontradicted, supporting the dependency court’s determinations. We review the evidence in the light most favorable to the dependency court’s findings and draw all reasonable inferences in support of those findings. [Citations.] Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citations.]” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366.)

c) Domestic Violence

The juvenile court found true the first supplemental allegation that Mother “continued to engage in domestic violence with the child’s father.” The “continued” aspect of the allegation is problematic because (1) there was a violence finding in the

original petition (§300), but not a domestic violence finding; and (2) the violence finding from the original petition (§ 300) was ultimately reversed. However, a domestic violence allegation was also included in the third supplemental allegation. Therefore, since there were two supplemental domestic violence allegations (the first and third supplemental allegations), we will focus on the domestic violence finding related to the third allegation.

In the third supplemental allegation, it was alleged Mother was unable to renew her lease due to (1) domestic violence, and (2) financial problems, which resulted in Mother and J.C. becoming homeless. The juvenile court found this allegation to be true. In our analysis, we focus on the evidence that was available at the time the juvenile court found the supplemental allegations to be true, which was August 28, 2013.

In a detention report, a Department social worker explained San Bernardino County sheriff's deputies "had been called on several occasions" in regard to Father being at Mother's apartment complex. On March 29, security contacted law enforcement because a male and female were "engaging in a loud altercation" in Mother's apartment. A Department social worker spoke to an anonymous person at the apartment complex's management company. The anonymous person said Father was regularly at the apartment complex and "is known to be in a relationship with [Mother]." The anonymous person said Mother and Father have been "heard on numerous occasions arguing and fighting."

An unidentified person who answered a telephone call from a Department social worker said Father “had been essentially living” with Mother when Mother was receiving family maintenance services—when Mother and Father were not supposed to be having contact. The unidentified person said Mother “was observed to have a black eye and other marks and bruises and there were occasions when the child was in the middle of the altercations.” Additionally, the unidentified person reported Mother “was observed to be beaten so badly by [Father] in the presence of the child that she urinated on herself.” Mother testified that she believed Father had violent tendencies.

The foregoing evidence reflects Mother and Father engaged in domestic violence. In particular, (1) Mother testified that Father had violent tendencies; (2) Mother was seen with a black eye and other bruises; (3) Mother was beaten so badly she urinated on herself; and (4) loud arguments were heard coming from Mother’s apartment. This combination of evidence is substantial support for the conclusion that Mother engaged in domestic violence.

Mother’s lease expired on June 30; she was unable to renew her lease due to financial issues and the management company deciding not to rent to her, due to the problems involving Father. At the time of the detention report (July 2013) Mother did not have housing. The foregoing is substantial evidence supporting the finding that Mother (1) was having financial problems, and (2) lacked housing. Accordingly, we conclude there is substantial evidence supporting the juvenile court’s findings that Mother was engaged in domestic violence, suffered financial problems, and lacked housing.

d) Court Order

The fourth supplemental allegation reflected Mother violated the juvenile court's order by allowing Father to be in her apartment. The minute order from the original detention hearing (§ 300) reflects: "Minor remains with Mother on the following conditions: Father is to stay away from Mother's residence; Mother is not to supervise Father's visitation; Father is to have no contact with the minor outside of CFS supervision; Mother may only leave minor with CFS approved child care providers; and Mother is to continue with [IBHS]."

A Department social worker spoke to an anonymous person at the apartment complex's management company, who said Father was regularly at the apartment complex and "is known to be in a relationship with [Mother]." An unidentified person who answered a telephone call from a Department social worker said Father "had been essentially living" with Mother when Mother was receiving family maintenance services—when Mother and Father were not supposed to be having contact.

The foregoing is substantial evidence that Mother permitted Father to be in the apartment with J.C. in violation of the juvenile court's order because the evidence reflects Father was essentially living with Mother. Accordingly, we conclude substantial evidence supports the finding Mother violated the juvenile court's order by allowing Father to be in her apartment.

e) Conclusion

The evidence reflects: (1) Mother was engaged in domestic violence, (2) Mother lacked housing, and (3) Mother violated a court order by allowing Father to be in the

apartment with J.C. The evidence of domestic violence and seemingly regular contact with Father provide substantial support for the findings that (1) J.C. was at a substantial risk of suffering serious physical harm as a result of Mother's failure to adequately supervise and protect J.C. (§ 300, subd. (b)), and therefore (2) the previous disposition was not effective in protecting J.C. (§ 387, subd. (b)). Accordingly, without considering the original findings, there was substantial evidence to support the findings on the supplemental petition (§ 387).

2. *REMOVAL*

a) Contention

Mother contends substantial evidence does not support the juvenile court's finding that reasonable efforts were made to prevent J.C.'s removal from Mother's care.

A child may be removed from the physical custody of her parents if the juvenile court finds "there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) "On appeal from a dispositional order removing a child from a parent we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence. [Citation.]" (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.)

In regard to the supplemental petition, the Department detained J.C. on July 11, 2013. Prior to that date, in this case, the Department had provided Mother with counseling, parenting classes, and transportation. In the prior case involving the three

older children, Mother, in 2012, was provided drug treatment, drug testing, individual counseling, and parenting classes. Since Mother had been provided with counseling and classes for over a year, but, despite those services, was engaging in domestic violence and permitting Father to be in her apartment, there is substantial support for the finding that there were no reasonable means to protect J.C. other than to remove her from Mother's care. The Department provided Mother with a variety of tools that would have permitted Mother to better protect J.C.; however, it appears from the evidence that Mother was not using those tools, and therefore, removal was necessary.

Mother contends there is not substantial evidence for the reasonable efforts finding because the Department should have protected Mother from Father by providing her safe housing, where Father could not locate Mother and J.C. Mother's argument only succeeds if one looks at the evidence in the light most favorable to Mother, so that one infers Father was trespassing at Mother's apartment, thus requiring a safe house for Mother and J.C.

Under the substantial evidence standard, we must look at the evidence in the light most favorable to the judgment. (*In re Noe F.*, *supra*, 213 Cal.App.4th at p. 366.) Accordingly, we infer Father was at Mother's house at her invitation. We draw this inference from the evidence reflecting Father "is known to be in a relationship with [Mother]" and that Father "had been essentially living" with Mother when Mother was receiving family maintenance services—when Mother and Father were not supposed to be having contact. Due to the inference that Mother invited Father to her apartment, the

evidence does not reflect a safe house was a reasonable effort that needed to be made prior to J.C.'s removal.

F. REUNIFICATION SERVICES

The juvenile court denied Mother reunification services pursuant to section 361.5, subdivision (b)(10), (11), and (13). Mother contends the juvenile court erred by denying her reunification services.

Reunification services need not be provided to a parent if (1) the court terminated reunification services for any of the child's half siblings because the parent failed to reunify with the half siblings after the half siblings were removed, and the parent failed to make a reasonable effort to treat the problems that led to the removal of the half siblings (§ 361.5, subd. (b)(10)); (2) the parent's parental rights over the child's half siblings have been permanently severed, and the parent has not made a reasonable effort to treat the problems that led to the half siblings being removed (§ 361.5, subd. (b)(11)); and (3) the parent has a history of extensive and chronic drug or alcohol abuse and has resisted prior court-ordered treatment for the problem during a three-year period immediately prior to the filing of the petition that brought the child to the court's attention (§ 361.5, subd. (b)(13)). Orders to bypass reunification services are reviewed under the substantial evidence standard. (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1092, fn. 7.)

Mother's three older children (J.C.'s half siblings) were removed from Mother's care because Mother failed to protect: (1) N.P. and N.P.J. by leaving them in the care of Grandmother, who is a known drug abuser; (2) N.P. and N.P.J. by leaving them in a home where drugs and drug paraphernalia were within the children's reach; (3) A.P. because the child remained out of Mother's custody for 18 months, due to Mother's substance abuse; and (4) all three children because Mother suffers from drug addiction, which impairs her judgment. The court also found Mother left the children without provisions for support when she was incarcerated.

In the instant case, the Department provided evidence that an unidentified person accused Mother of regularly consuming alcohol while participating in the substance abuse treatment program at IBHS, and of begging for money with J.C. at a liquor store. The social worker spoke to the unidentified person when the social worker was calling telephone numbers in an attempt to contact Mother and Father. Therefore, one can reasonably infer the unidentified person knew Mother or Father, since the person was answering a telephone number provided to the Department for the purposes of reaching Mother and/or Father. As a result, the unidentified person's statement that Mother was consuming alcohol, despite Mother being in substance abuse treatment, is credible, and therefore constitutes substantial evidence that Mother continued to suffer from substance abuse issues.

Accordingly, there is substantial support for the juvenile court's finding Mother had not made a reasonable effort to treat the problems that led to the half siblings being removed, namely, the substance abuse issue. (§ 361.5, subd. (b)(11).) Additionally, the

record reflects Mother's parental rights to the three older children were terminated May 13, 2013. Reunification services for Mother and J.C. were denied on August 28, 2013. Thus, given the record, we conclude substantial evidence supports the juvenile court's order bypassing reunification services because Mother's parental rights over J.C.'s half siblings were terminated, and Mother did not make a reasonable effort to treat the problems that led to the half siblings being removed. (§ 361.5, subd. (b)(11).)

Because we have concluded reunification services were properly bypassed pursuant to section 361.5, subdivision (b)(11), we do not address whether they were also properly bypassed pursuant to section 361.5, subdivision (b)(10) and (13). (See *In re Marquis H.*, *supra*, 212 Cal.App.4th at p. 724 [purely academic questions are moot].)

G. WRIT PETITION

Mother contends her failure to file a writ petition should not result in a forfeiture of the issues she has raised on appeal. We have addressed the merits of the issues Mother raised on appeal; we have not treated the issues as forfeited. Accordingly, we conclude this issue is moot because we can provide no further relief than addressing the merits of the issues. (*In re Albert G.* (2003) 113 Cal.App.4th 132, 135 [an issue is moot when no effective relief can be provided].)

H. REQUEST TO CHANGE A COURT ORDER

Mother contends the juvenile court erred by denying her request to change a court order. (§ 388.)

Under section 388, a parent may petition a juvenile court to modify a previous order on the grounds of changed circumstances. (§ 388; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1235.) The petitioner has the burden to show, by a preponderance of the evidence, a change of circumstances, and to show that the proposed modification is in the child's best interests. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; Cal. Rules of Court, rule 5.570(h)(1).) "We review the grant or denial of a petition for modification under section 388 for an abuse of discretion. [Citations.]" (*B.D.*, at p. 1228.)

In regard to changed circumstances, the change must be substantial. (*In re Heraclio A.* (1996) 42 Cal.App.4th 569, 577.) J.C. was removed because Mother (1) was engaged in domestic violence, (2) lacked housing, and (3) violated a court order by allowing Father to be in the apartment with J.C. On October 23, 2013, Mother was arrested for possessing methamphetamine. On November 1, Mother pled no contest to a charge of possessing a controlled substance. (Health & Saf. Code, § 11377, subd. (a).) On December 28, Mother was arrested and charged with being under the influence of a controlled substance. (Health & Saf. Code, § 11550, subd. (a).) On January 5, 2014, Mother was charged with theft of personal property. (Pen. Code, § 484.) On March 7, Mother was arrested for possessing methamphetamine. (Health & Saf. Code, § 11377, subd. (a).)

Mother filed her request to change a court order (§ 388) on April 15, 2014. In the request, Mother asserted circumstances had changed because the appellate court reversed the original (§ 300) findings. The juvenile court could reasonably conclude Mother had not demonstrated changed circumstances because Mother was addressing

changes related to the prior/original petition (§ 300), rather than the supplemental (§ 387) findings. So, while there may have been changes to the original findings, there were no changes to the supplemental findings (§ 387). Without changes to the supplemental findings, Mother failed to show a change in circumstances. Accordingly, we conclude the juvenile court did not abuse its discretion by denying Mother's request to change a court order (§ 388).

I. CUMULATIVE EFFECT

Mother contends the cumulative effect of the foregoing alleged errors requires the judgment be reversed. We have not found any errors. As a result, there is nothing to cumulate. (See *People v. Duff* (2014) 58 Cal.4th 527, 562 [lack of errors means there is nothing to cumulate].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.